REMARKS

Claim Rejections – 35 USC §112

The Examiner rejected claims 1, 9-12 & 13 under 35 U.S.C. §112 as indefinite. The Examiner objected to the use of the terms "such contact" and "contact." That rejection is traversed. Nevertheless, applicant hereby amends claims 1 and 9-12 to address the Examiner's concerns. Claim 13 has been cancelled without prejudice.

Claim Rejections – 35 USC §103

The Examiner rejected claims 1, 9, 10, 15-19 and 23 under 35 U.S.C. §103(a) as obvious in light of U.S. Patent No. 4,637,289 to Ramsden and U.S. Patent No. 3,785,230 to Lokey. The Examiner rejected claims 11 and 12 as obvious in light of Ramsden, Lokey and U.S. Patent No. 3,946,631 to Malm. The Examiner rejected claim 14 as obvious in light of Ramsden, Lokey and U.S. Patent No. 1,551,900 to Morrow. Those rejections are traversed because the cited references do not show all the limitations required by the claims. Even if the references did show all the limitations required by the claims, the claims would still not be obvious because there is no teaching, suggestion or motivation in the prior art to combine the references and there is no reasonable expectation that the disclosures of the references could be successfully combined. Nevertheless, applicant has amended claims to further specify what is being claimed. Applicant has also canceled claim 23 without prejudice and added two new claims.

Whether applicant's amended claims are obvious depends on the following factors: 1) the scope and content of the prior art, 2) the differences between the prior art and the claims at issue, 3) the level of ordinary skill in the pertinent art, and 4) objective

indicia of non-obviousness such as a long felt need, the failure of others to satisfy that need, and industry awards and recognition. Graham v. John Deere, 383 U.S. 1, 148 USPQ 459 (1966). These factors are discussed below.

Scope and Content of the Prior Art

It is unnecessary at this point to determine whether the Ramsden, Lokey, Malm and Morrow patents cited by the Examiner are within the proper scope and content of the prior art because of the differences between those references and applicant's claims.

Differences Between the Prior Art and the Claims

Claims 1, 9 and 10 have been amended to require "a detection system adapted to impart an electric signal to the blade and to monitor the signal for a predetermined change indicative of contact between a person and the blade." Neither Ramsden nor Lokey discloses such a detection system. Ramsden discloses a sensor (pneumatic valve 62) "mounted on the guard/clamp at a location adjacent to the path of the saw blade to permit actuation if a work piece is detected at a predetermined location." Ramsden, column 1, lines 34-37. Ramsden does not disclose or suggest any detection system that imparts a signal to the blade or that monitors a signal on the blade for a predetermined change indicative of contact. Similarly, Lokey does not show or suggest any system that monitors a signal on a blade for a predetermined change indicative of contact between a person and the blade. On the contrary, Lokey discloses a system that uses the blade as an antenna to detect when a person's hand comes close to the blade to avoid contact. This is directly contrary to the limitations set forth in applicant's claims.

Claims 1, 9 and 10 also have been amended to require "a reaction system configured to retract the blade from a position where at least part of the blade is above the work surface to a position where the blade is completely below the work surface upon detection by the detection system of the predetermined change indicative of contact between a person and the blade." Neither Ramsden nor Lokey teaches or suggests any such system. Ramsden discloses a system that looks for the presence of a workpiece and actuates the cutting cycle only if the workpiece is detected. Ramsden, column 1, lines 54-58. Ramsden does not disclose a system to retract the blade if contact is detected as the blade is moving up or when at least part of the blade is above the work surface. Instead, if the workpiece is detected, the blade will move up and make the cut regardless of whether the blade contacts a person. Lokey discloses a hand-held circular saw and a table saw, neither of which has any type of blade retraction.

Claims 11 and 12 depend from claim 1 and therefore distinguish Ramsden and Lokey for the same reasons that claim 1 distinguishes those references. The other reference cited against claims 11 and 12, U.S. Patent No. 3,946,631 to Malm, discloses a standard up-cut saw without any discussion about imparting an electric signal on the blade or monitoring a signal for changes indicative of accidental contact with the blade.

Claims 11 and 12 also require "a brake mechanism configured to engage [a] brace member and stop the upward motion of the blade upon detection by the detection system of the predetermined change indicative of contact between a person and the blade." The Examiner says that Malm shows a brace member 308 that is engaged by a brake mechanism 306 to stop the upward motion of the blade. Applicant disagrees. Number 308 in Malm refers to a piston and number 306 refers to a spring. Malm,

column 7, lines 58-60. Piston 308 moves the blade up as it retracts and down as it extends, and spring 306 acts to extend piston 308 when the piston is vented to atmosphere. Piston 308 is vented to atmosphere through a valve 292 controlled by a solenoid 290. When solenoid 290 is energized, valve 292 causes pressurized air to retract piston 308 and thereby raise the blade. When solenoid 290 is not energized, valve 292 vents piston 308 to atmosphere and spring 306 causes the piston to extend and thereby lower the blade. Solenoid 290 is controlled by two switches 264 and 266 that are remote from each other and that are designed so that a person must use both hands to simultaneously actuate the switches to energize the solenoid and raise the blade. In that manner, the user's hands must be away from the work zone when the blade moves up. Thus, piston 308 is not a brace member and spring 306 is not a brake mechanism configured to engage the brace member, as required by claims 11 and 12. Rather, the piston and spring simply raise and lower the blade when a user actuates the switches. In fact, spring 306 could not even stop piston 308 in the event of an accident unless valve 292 were vented to atmosphere.

Claim 14 depends from claim 1 and distinguishes Ramsden and Lokey for the same reasons that claim 1 distinguishes those references. Claim 14 also requires "a rotatable spindle, where the blade is mounted on the spindle, and where the spindle and blade are electrically insulated from the frame."

Claims 15-19 require "a detection system configured to detect accidental contact between a user and the blade." A detection system configured to detect contact is not disclosed by either Ramsden or Lokey, as discussed above. Claims 15-19 have also been amended to require "a reaction system configured to retract the spindle and blade

from a position where at least part of the blade is above the upper surface to a position where the blade is completely below the upper surface upon detection of accidental contact between a user and the blade by the detection system." Neither Ramsden nor Lokey teach or suggest any such system, as explained above.

Claims 25 and 26 are new claims that describe a method of controlling an up-cut chop saw. The method requires "moving the blade upward to a position where at least part of the blade is above the work surface; detecting contact between the blade and a person when at least part of the blade is above the work surface; and stopping upward motion of the blade when contact between the blade and a person is detected." Claim 26 further requires stopping the upward motion of the blade "within at least 20 milliseconds of detecting contact between the blade and a person." None of the cited references disclose or suggest such limitations or methods.

The fact that the cited references fail to teach or suggest all the limitations in the claims means that the references by themselves cannot establish obviousness. The MPEP expressly says: "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." MPEP §2143.03 (citations omitted).

Even if the cited references disclosed all of the limitations in the claims, the claims would still not be obvious because there is no teaching, suggestion or motivation in the prior art to combine Ramsden and Lokey. The MPEP explains: "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge

generally available to one of ordinary skill in the art." MPEP §2143.03. In other words, the desirability of the combination must be suggested by the prior art or known by persons of ordinary skill in the art. If not, then the combination is improper. MPEP §2143.

In the case at hand, the Examiner says it would have been obvious to combine Ramsden and Lokey "in order to increase the safety of the device of Ramsden." Office Action, ¶5. But neither Ramsden nor Lokey makes that suggestion. To the contrary, Ramsden says his saw design is already safe and he asserts that his invention "will drastically reduce or eliminate the incidence of accidents in using the saw." Ramsden, column 3, lines 7-8. Lokey similarly says his saws are safe by saying his invention will stop the blade "prior to even the slightest contact with the body of the user." Lokey, column 2, lines27-28. Thus, neither of those references suggests a need to make saws safer.

Moreover, if a desire to increase the safety of a device was by itself a sufficient motivation to combine references, then almost no safety improvement could be patented since virtually all inventions are combinations of old elements. Clearly, that is not the rule. Rather, there must be some express or implicit teaching, suggestion or motivation in the prior art to make the specific combination. Expressed differently, it is not the desire to make something better but the solution that is the issue.

In the case at hand, that means there must be some express or implicit teaching or suggestion in the prior art to modify Ramsden as set forth in applicant's claims. For example, concerning applicant's claim 1, there must be some teaching or suggestion to include in an up-cut chop saw an isolated blade, a system to impart and monitor a

signal on the blade to detect contact between the blade and a person, and a system to retract the blade upon detection of contact. Where in the prior art is there a suggestion to make an up-cut chop saw with such a combination? In fact, where does the prior art even suggest that the safety of an up-cut chop saw needs to be improved? Even if there was such a suggestion, why would a person of ordinary skill think to include a detection system to impart a signal to the blade and to monitor that signal for contact and what would that system involve? Would it not be more likely that a person of ordinary skill would try to avoid contact, like in Lokey, if that person thought the saw in Ramsden needed to be safer? Why would a person of ordinary skill think to include a reaction system to retract the blade in Ramsden upon the detection of contact? Nothing in the prior art suggests retracting the blade. These questions illustrate the failure of Ramsden and Lokey to teach or suggest a system as defined in applicant's claims.

It is only by looking with hindsight at applicant's disclosure that one finds a suggestion or teaching to modify Ramsden as set forth in applicant's claims. It is applicant's disclosure, not the prior art, that teaches the desirability of up-cut saws configured as set forth in the claims. More specifically, it is applicant's disclosure that teaches how to isolate the blade in an up-cut saw, how to include a detection system to detect contact between the blade and a person, and how to retract that blade or stop the upward motion of that blade if contact is detected.

There is also no reasonable expectation that the disclosures of Ramsden and Lokey could be successfully combined. Ramsden discloses an up-cut saw with a large blade mounted to move up through a work surface to cut a workpiece on the work surface. Lokey, in contrast, discloses a hand-held circular saw and a table saw, both

with smaller blades that are supported and enclosed differently than in an up-cut saw. These differences are significant because different structures will affect Lokey's detection system. It is probable that Lokey's circuit to detect proximity would not work in an up-cut saw because of the increased capacitive coupling between the larger blade and the surrounding conductive structure. In other words, the circuit in Lokey, if incorporated into an up-cut saw, might interpret the surrounding conductive structure (such as guard/clamp 16 and base 2, for example) as a person because that structure could have a capacitance approximately equivalent to the capacitance of some persons. Additionally, the blade in Ramsden is much bigger and has much more angular momentum when spinning than the blade in Lokey, so it is highly unlikely that the brake in Lokey could stop the blade in Ramsden. The blade and motor in Ramsden will also have significant momentum as they move up to cut a workpiece, and there is no teaching or suggestion in either Ramsden or Lokey how to overcome that momentum and stop or retract the blade if contact is detected. These differences imply that a person of ordinary skill in the art would not think the systems of Lokey could be reasonably included in the saw of Ramsden.

Level of Ordinary Skill

It is unnecessary at this point to determine the level of ordinary skill in the art of designing up-cut chop saws because of the differences between the cited references and applicant's claims.

Objective Indicia of Non-Obviousness

Every year in the United States there are tens of thousands of people severely injured with power saws according to the U.S. Consumer Product Safety Commission,

National Electronic Injury Surveillance System, Directorate for Epidemiology, 2001.[1] These are all severe injuries that require a visit to a hospital emergency room. About 10% of these injuries result in amputations. The number and severity of these injuries clearly shows there is a long felt need for safer saws. The fact that others have tried to solve this problem as it relates to up-cut chop saws is evidenced by the Ramsden and Malm references cited by the Examiner. However, the continued high number of severe injuries shows that those attempts have failed. Fortunately, saws constructed as required by applicant's currently pending claims have the potential to significantly reduce the severity of these injuries. The long felt need for safer saws and the failure of others to satisfy that need supports the conclusion that applicant's claims are non-obvious. (See the declaration of inventor Stephen F. Gass, submitted previously, ¶5)

Additionally, the technology which is the basis for saws constructed as required by applicant's currently pending claims has been recognized as new and innovative by various entities associated with the woodworking industry, as shown by the following awards (See Gass Decl. ¶6):

- Chairman's Commendation. The U.S. Consumer Product Safety Commission awarded the technology a Chairman's Commendation for significant contributions to product safety. That award was reported nationally on CNN Headline News.

- Challenger's Award. At an International Woodworking Fair in Atlanta, Georgia, the technology won the Challenger's Award, which is the woodworking industry's highest honor. It recognizes the most innovative and technically advanced improvements to woodworking equipment.

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[1] These statistics are publicly available from the U.S. Consumer Product Safety Commission at www.cpsc.gov.

- Popular Science – One of the 100 Best New Innovations. The magazine *Popular Science* identified the technology as one of the 100 best new innovations of 2002.

- Workbench Magazine – One of the Top 10 Tools for 2003. *Workbench* magazine included saws incorporating the technology on its list of the top 10 innovative tools for 2003.

- Woodwork Institute of California Endorsement. The Woodwork Institute of California has endorsed the technology, stating:

> As a Trade Association in the construction industry (representing over 250 manufacturers of architectural millwork with an excess of 4,000 employees, all of whom use saws of one type or another) we find your SawStop technology and its potential of eliminating or reducing worker injury of extreme significance. Generally, we would not endorse a commercial product; however the potential benefit to our members and their employees of implementing the SawStop technology on the tools used within our industry overrides such.

- Editor's Choice Award, Tools of the Trade. The magazine *Tools of the Trade* awarded the technology its 2001 Editor's Choice Award in recognition of its significance.

The technology that is the basis for applicant's currently pending claims also has been the subject of extensive media coverage, including national coverage by CNN Headline News, by the television program NEXT@CNN, by the Associated Press, and by Paul Harvey on the ABC Radio Network. (See Gass Decl. ¶7.) Additionally, numerous magazines have published reports about the technology, and have referred to it as "revolutionary," "unique," and "ingenious." Id. The media's interest in the technology supports the conclusion that the technology is novel and noteworthy.

Summary Concerning Non-Obviousness

The differences between the currently pending claims and the cited references, the lack of a teaching or suggestion to combine the cited prior art references, the lack of a reasonable expectation that the cited prior art references could be successfully combined, the long felt but unsolved need for saws constructed as required by applicant's claims, and the industry recognition and awards given to the underlying technology all support the conclusion that applicant's claims are not obvious.

Double Patenting

The Examiner provisionally rejected claims 1 and 15 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 16 of co-pending Application No. 09/929,235 in view of Lokey, claim 1 of co-pending Application No. 09/929,238 in view of Ramsden and Lokey, and claim 1 of co-pending Application No. 09/929,242 in view of Ramsden and Lokey. These rejections are traversed. (The Examiner also provisionally rejected claim 23, but that claim has been cancelled without prejudice so it is not discussed below.)

The MPEP explains the standards for determining whether an obviousness-type double patenting rejection is proper as follows:

> Since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection, the factual inquiries set forth in *Graham v. John Deere* Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103 are employed when making an obvious-type double patenting analysis. (MPEP §804 at 800-22.)

Those factual inquiries are: 1) the scope and content of the prior art, 2) the differences between the prior art and the claims at issue, 3) the level of ordinary skill in the pertinent

art, and 4) objective indicia of non-obviousness such as a long felt need, the failure of others to satisfy that need, and industry awards and recognition. Graham v. John Deere, 383 U.S. 1, 148 USPQ 459 (1966). Additionally, there must be some teaching, suggestion, or motivation found either explicitly or implicitly in the prior art to combine references, as explained above. MPEP §2143.03. Applying these standards to the claims at hand shows that the obviousness-type double-patenting rejections should be withdrawn.

Scope and Content of the Prior Art

As stated previously, it is unnecessary at this point to determine whether Ramsden and Lokey are within the proper scope and content of the prior art because of the differences between those references and applicant's claims. However, it is important to point out that the disclosures of the co-pending applications cited by the Examiner may not be used as prior art when deciding whether an obviousness-type double patenting rejection is proper. The MPEP explains that "[w]hen considering whether the invention defined in a claim of an application is an obvious variation of the invention defined in the claim of a patent, the disclosure of the patent may not be used as prior art." MPEP §804 at 800-22.

Differences Between the Claims and the Cited References

1. Claim 16 from Application 09/929,235 Combined With Lokey.

Claims 1 and 15 are not obvious in light of claim 16 of co-pending Application No. 09/929,235 combined with Lokey because of differences between the claims and because of the lack of any suggestion or motivation to combine Lokey with claim 16 of the co-pending application. However, the issue is now moot because claim 16 in

Application No. 09/929,235 has been withdrawn from consideration in response to a restriction requirement. Accordingly, the double patenting rejection in light of that claim should be withdrawn.

2. Claim 1 from Application 09/929,238 Combined With Ramsden & Lokey.

Claim 1 in the present application is not obvious in light of claim 1 of co-pending Application No. 09/929,238 combined with Ramsden and Lokey because those references fail to disclose all the limitations of the claim and because there is no teaching or suggestion to combine Ramsden and Lokey.

Specifically, claim 1 in the present application requires a blade "electrically isolated so that it may carry an electric signal" and a detection system adapted "to monitor the signal for a predetermined change indicative of contact between a person and the blade." None of the cited references discloses a detection system adapted to monitor a signal on a blade for a predetermined change indicative of contact. Claim 1 from Application No. 09/929,238 recites "a detection system to detect contact between a person and the blade," but it does not say the detection system is adapted to monitor a signal on an electrically isolated blade for a predetermined change indicative of contact. Ramsden also fails to monitor a signal on a blade for a predetermined change indicative of contact. As explained above, Lokey uses a blade as an antenna to try and detect when a person comes close to the blade, but it does not monitor a signal for changes indicative of contact.[2]

[2] In co-pending Application No. 09/929,242 the Patent Office concluded that detecting contact is patentably distinct from detecting proximity by restricting claims with those limitations. The Examiner in that application (which is the same examiner as in the present application) said "a contact detection system set up to determine contact is used for the function of detecting contact as opposed to proximity," and the Examiner

Additionally, claim 1 in the present application, as amended, requires "a reaction system configured to retract the blade from a position where the blade is at least partially above the work surface to a position where the blade is completely below the work surface upon detection by the detection system of the predetermined change indicative of contact between a person and the blade." None of the cited references discloses a reaction system configured to retract a blade below a work surface upon detection of contact. Claim 1 from Application No. 09/929,238 recites "a reaction system adapted to create an impulse against movement of the blade into the cutting zone" upon detection of contact, but creating an impulse against movement is different from retracting a blade below a work surface.[3] Ramsden suggests a sensor to detect if a workpiece is present, but it does not teach or suggest retracting a blade in response to contact. Lokey discloses ringing a bell and stopping a blade if a person comes close to a blade, but Lokey does not suggest any action in response to contact.

Claim 15 in the present application is not obvious in light of claim 1 of co-pending Application No. 09/929,238 combined with Ramsden and Lokey because those references fail to disclose a reaction system as specified in claim 15. Specifically, claim 15 requires "a reaction system configured to retract the spindle and blade from a position where the blade is at least partially above the upper surface to a position where

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restricted the claims and concluded they were patentably distinct because of those different functions.

[3] In co-pending Application No. 09/929,238 the Patent Office concluded that retracting a blade is different from creating an impulse against movement by restricting claims with those limitations. In that application, the Examiner (which is the same examiner as in the present application) said claims "drawn to a reaction system that moves the blade away from a cutting zone" were patentably distinct from claims "drawn to a reaction system having a first mechanism adapted to stop rotation of the blade, and a second mechanism to create an impulse against movement into the cutting zone."

the blade is completely below the upper surface upon detection of accidental contact between a user and the blade by the detection system." As explained above, none of the cited references discloses a reaction system configured to retract a blade below a work surface upon detection of contact.

Thus, no cited reference discloses the limitations recited in the claims of the present application, and therefore, the combination of those references cannot make those claims obvious. MPEP §2143.03 ("To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art."). Moreover, there is no suggestion or teaching in the prior art to combine Ramsden and Lokey with claim 1 from Application No. 09/929,238, for the reasons explained previously. Again, the teachings of Application No. 09/929,238 may not be used as prior art to provide the suggestion to combine. MPEP §804 at 800-22.

3. Claim 1 from Application 09/929,242 Combined With Ramsden & Lokey.

Claim 1 in the present application is not obvious in light of claim 1 of co-pending Application No. 09/929,242 combined with Ramsden and Lokey because those references fail to disclose all the limitations of the claim and because there is no teaching or suggestion to combine Ramsden and Lokey.

Claim 1 in the present application requires a blade "electrically isolated so that it may carry an electric signal" and a detection system adapted "to monitor the signal for a predetermined change indicative of contact between a person and the blade." As explained above, neither Lokey nor Ramsden discloses a detection system adapted to monitor a signal on a blade for a predetermined change indicative of contact. Claim 1 from Application No. 09/929,242 recites "a detection system adapted to detect one or

more dangerous conditions between a person and the cutting tool," but it does not say the detection system is adapted to detect contact or to monitor a signal on an electrically isolated blade for a predetermined change indicative of contact.[4]

Additionally, claim 1 in the present application requires "a reaction system configured to retract the blade from a position where the blade is at least partially above the work surface to a position where the blade is completely below the work surface upon detection by the detection system of the predetermined change indicative of contact between a person and the blade." Claim 1 from Application No. 09/929,242 recites "a reaction system associated with the detection system and the cutting tool, where the reaction system is configured to retract the cutting tool at least partially away from the cutting region upon detection of at least one of the dangerous conditions by the detection system," but that claim fails to recite retracting a blade completely below a work surface upon detection of contact as required by claim 1 in the present application. Similarly, neither Lokey nor Ramsden discloses a reaction system configured to retract a blade below a work surface upon detection of contact, as explained above.

Claim 15 in the present application is not obvious in light of claim 1 of co-pending Application No. 09/929,242 combined with Ramsden and Lokey because those

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[4] The Patent Office concluded in co-pending Application No. 09/929,241 that a system to detect a dangerous condition was patentably distinct from a system to detect contact between a user and a blade by restricting claims with those limitations. The Examiner in that application said: "This application contains claims directed to the following patentably distinct species of the claimed invention: ... the embodiment of a detection system for a dangerous condition ... [and] the embodiment of a contact detection system for contact between a person and a cutter." The Patent Office made the same conclusion in a restriction requirement in Application No. 09/929,242. In that application, the Examiner (which is the same examiner as in the present case) said claims "having a reaction system that detects whether or not a blade guard is present as opposed to contact or proximity of a user to the blade" had separate utility and therefore were patentably distinct.

references fail to disclose "a reaction system configured to retract the spindle and blade from a position where the blade is at least partially above the upper surface to a position where the blade is completely below the upper surface upon detection of accidental contact between a user and the blade by the detection system." As explained above, none of the cited references discloses a reaction system configured to retract a blade completely below a work surface upon detection of contact.

Thus, the cited references fail to disclose all the limitations recited in applicant's claims, and therefore, the combination of those references cannot make the claims obvious. MPEP §2143.03. Moreover, there is no suggestion or teaching in the prior art to combine Ramsden and Lokey with claim 1 from Application No. 09/929,238, for the reasons explained previously. Again, the teachings of Application No. 09/929,238 may not be used as prior art to provide the suggestion to combine. MPEP §804 at 800-22.

Level of Ordinary Skill

As explained above, it is unnecessary at this point to determine the level of ordinary skill in the art of designing up-cut chop saws because of the differences between the cited references and applicant's claims.

Objective Indicia of Non-Obviousness

The objective indicia of non-obviousness discussed above supports the conclusion that the claims are not obvious and weighs against the obviousness-type double patenting rejections.

CONCLUSION

Applicant's currently pending claims, as amended, are not obvious because they include limitations not found in the cited references. Additionally, the cited references fail to disclose any teaching or suggestion to combine the Ramsden and Lokey references to arrive at a saw configured as set forth in applicant's claims. Objective indicia of non-obviousness also support the conclusion that applicant's claims are not obvious. Accordingly, applicant requests that the rejections be withdrawn and that the application proceed to issuance.

Respectfully submitted,

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Date: March 1, 2004

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